

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Dan G. Blair;  
Tony L. Hammond; and  
Nanci E. Langley

Delaware Station Post Office  
Albany, New York 12209

Docket No. A2011-1

ORDER GRANTING MOTION TO COMPEL

(Issued December 22, 2010)

In Order No. 567, the Commission gave notice of this appeal and directed the Postal Service to file its responsive pleading or administrative record.<sup>1</sup> On November 5, 2010, the Postal Service filed its response reiterating its position that this proceeding is not subject to 39 U.S.C. 404(d).<sup>2</sup> As a courtesy, the Postal Service also submitted the Final Determination to Close the Delaware Station. On December 7, 2010, the Delaware Area Neighborhood Association (DANA) filed a motion to compel the Postal

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<sup>1</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 22, 2010 (Order No. 567).

<sup>2</sup> Notice of the United States Postal Service, November 5, 2010 (Notice). The Postal Service notes two grounds in support of its legal position: first, that the Commission lacks subject matter jurisdiction, and second, that the discontinuance of the Delaware Station does not qualify as a closure under section 404(d). *Id.* at 2.

Service to file its complete administrative record.<sup>3</sup> DANA also requests that, after the Postal Service files the complete administrative record, the Commission modify the procedural schedule to permit parties to file supplemental briefs based on the complete record.

In support of its Motion, DANA contends that the underlying record consists of many more documents than just the Final Determination. DANA argues that the Postal Service's failure to file the administrative record is contrary to the Commission's rules, 39 CFR 3001.113. *Id.* at 2-3. DANA asserts that the refusal to provide the record prejudices its ability to participate in this appeal and deprives the Commission of information needed to assess the merits of the appeal.<sup>4</sup>

The Public Representative filed a response in support of the Motion, noting, that without the complete record, the Petitioner and other parties are at a disadvantage.<sup>5</sup>

The Postal Service opposes the Motion, arguing that it is not obligated to file any administrative record in this proceeding because the appeal concerns a station and not a post office.<sup>6</sup> The Postal Service indicates that it does not oppose the request for additional time. *Id.* at 2 (footnote omitted.)

*Commission analysis.* At the outset, the Commission recognizes its long-held disagreement with the Postal Service over the scope of section 404(d). The Commission's decision to grant the Motion is not taken lightly and is based on the narrow circumstances presented in the instant proceeding. Moreover, the Commission stresses that this Order neither represents a ruling on the merits of the jurisdictional issue nor whether the discontinuance is subject to section 404(d).

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<sup>3</sup> Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, December 7, 2010 (Motion).

<sup>4</sup> DANA also comments on the efforts of another petitioner, Catherine Fahey, to obtain the administrative record through a Freedom of Information Act request. *Id.* at 3-4.

<sup>5</sup> Public Representative Response in Support of Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, December 14, 2010.

<sup>6</sup> Reply of United States Postal Service in Response to Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, December 14, 2010.

While it may be possible that one of the petitioners may offer the Postal Service's administrative record, obtained via the Freedom of Information Act, for inclusion in the record in this proceeding, the more efficient and preferable approach is for the Postal Service to file the administrative record on which it based its decision to close the Delaware Station. Given that this ruling is limited and is without prejudice to any parties' legal position, the Commission views such filing as a matter of comity. Accordingly, the Commission concludes that granting DANA's Motion is appropriate.

*Request for additional time.* DANA also requests that the procedural schedule be modified. The Postal Service does not oppose that request. The procedural schedule is revised as follows:

- The Postal Service's complete administrative record is due January 6, 2011.
- Supplemental briefs in response to the Postal Service's filing are due January 20, 2011.
- Replies, if any, to the supplemental briefs are due January 27, 2011.

*It is ordered:*

1. The Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, filed December 7, 2010, is granted.
2. The procedural schedule is revised as discussed in the body of this Order.

By the Commission.

Shoshana M. Grove

Secretary

Commissioner Blair dissenting.